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RESTRICTIONS UPON LOCAL AND SPECIAL
LEGISLATION IN THE UNITED STATES.

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VI.

THE RESTRICTIONS ACTUALLY IN FORCE IN THE
SEVERAL STATES.

THE constitutions now in force in the several States vary greatly with regard to the restrictions upon local and special legislation. Those of the New England States, except Maine, contain no restrictions whatever other than such as are involved in the general prohibition of special privileges, immunities, restraints, or disqualifications, usually contained in the bill of rights, and except also the usual requirement of uniform taxation. The same may be said of the constitutions of Delaware and South Carolina, except that they contain, inferentially, some prohibitions of special laws in regard to the formation of corporations. The constitution of Georgia makes direct mention of special legislation only in the clause forbidding it in any case for which provision has been made by an existing general law, but the provision in this constitution, and that of Tennessee, that the legislature shall pass no laws in regard to changes of name, and a few other matters, is really directed against special legislation, for it is further provided that the legislature may (or, in regard to certain matters, shall), by general laws, confer on the courts power to regulate these matters.

The constitutions of Michigan, North Carolina, Ohio, Virginia and Wisconsin contain very few restrictions, while most of the new or more recently amended constitutions

have very many, and in these there is more uniformity,¹ the whole set being in some cases almost identical.

In the great majority of States the character of the legislation sought to be thus restricted is described as "local or special," but in Maine, Michigan, Minnesota, South Dakota, Texas, Washington and Wisconsin, it is "special or private;" while in Kansas, Ohio and Virginia, it is "special" simply; in Mississippi and New Jersey, "private, local or special;" in New York, "private or local;" and in North Carolina, "private," except that in regard to legislation for corporations the word "special" is used.

From the above statement it appears that in eleven States the constitution, though limiting the power of special legislation, makes no reference whatever to local laws, apparently because it was thought unnecessary to distinguish between legislation which is strictly local and that which may be generally described as special, and certainly the reported cases in those States do not indicate any attempts to distinguish between local and special laws.²

The term "private law" used, in nine constitutions, together with "special law," was probably intended to refer particularly to laws in regard to private interests, as distinguished from special laws in regard to places or public matters, but as the former as well as the latter are special laws, the distinction would seem unnecessary.

In New York, where the expression is "private or local law," the term "local law" appears to include special

¹ Even this comparative uniformity is rather strikingly broken in the case of the constitutions of North and South Dakota, both adopted in 1889. The latter, which was originally adopted in 1885 for the proposed State of Dakota, has less than a third as many prohibitions of local and special legislation as are found in the former.

² Thus the laws passed upon in *Francis v. Atchison, etc.*, R. R. Co., 19 Kan., 303, and *Comms. v. Shoemaker*, 27 id., 77, were local rather than special, but this point was not raised, and they were sustained only on the ground of the inapplicability of general legislation to the objects sought.

laws in regard to local matters as well as those laws which may be strictly defined as local.

On the whole, therefore, though the terms used are not absolutely identical in all the States, there would seem to be no ground for supposing that this indicates any real difference in regard to the objects sought; and it may be stated generally that all the restrictions here treated of affect the power both of special and local legislation.¹

These restrictions are found in the following constitutions :

Alabama,	1875, Art. 4, Sec. 23; Art. 14, Sec. 1.
Arkansas,	1874, Art. 5, Secs. 24, 25.
California,	1879, Art. 4, Sec. 25.
Colorado,	1876, Art. 5, Sec. 25; Art. 15, Sec. 12.
Delaware,	1831, amended 1875, Art. 1, Sec. 17.
Florida,	1885, Art. 3, Sec. 20.
Georgia,	1877, Art. 7, Sec. 4, Par. 1; Art. 3, Sec. 7, Par. 18.
Idaho,	1890, Art. 3, Sec. 19.
Illinois,	1870, Art. 4, Sec. 22.
Indiana,	1851, Art. 4, Sec. 22.
Iowa,	1857, Art. 3, Sec. 30; Art. 8, Sec. 1.
Kansas,	1859, Art. 2, Sec. 17; Art. 12, Sec. 5.
Kentucky,	1891, Secs. 59, 60.
Louisiana,	1879, Art. 46.
Maine,	1820, amended 1876, Art. 4, Pt. 3, Secs. 12, 14.
Maryland,	1867, Art. 3, Secs. 33, 48.
Michigan,	1850, Art. 4, Secs. 23, 26.
Minnesota,	1857, Art. 4, Sec. 28; Art. 10, Sec. 2; amended 1881, Art. 4, Sec. 33.
Mississippi,	1891, Art. 4, Sec. 87-90.
Missouri,	1875, Art. 4, Sec. 53.
Montana,	1889, Art. 5, Sec. 26; Art. 12, Sec. 11.
Nebraska,	1875, Art. 3, Sec. 15.
Nevada,	1864, Art. 4, Sec. 20.
New Jersey,	1844, amended 1875, Art. 4, Sec. 7, Par. 11.
New York,	1846, amended 1874, Art. 2, Sec. 18.
North Carolina,	1868, amended 1876, Art. 2, Secs. 10, 12.

¹ An exception exists in the constitution of Maryland, which forbids special laws "for any case for which provision has been made by existing general law:" local laws not being held to be within this prohibition. *State v. Commrs.*, 29 Md., 515; *Lankford v. County Commrs.*, 73 id., 105.

The prohibition, in the Kentucky constitution of 1850, of special legislation for the sale of infants' real estate and some other matters, may possibly be subject to a similar construction. See *Marshall v. Marshall*, 4 Bush. (Ky.), 248.

North Dakota,	1889, Art. 2, Secs. 69, 70; Art. 7, Sec. 31.
Ohio,	1851, Art. 13, Sec. 1.
Oregon,	1857, Art. 4, Secs. 23, 24.
Pennsylvania,	1874, Art. 3, Sec. 7.
South Carolina,	1868, Art. 12, Sec. 1.
South Dakota,	1889, Art. 3, Secs. 23, 24, 26; Art. 17, Sec. 1.
Tennessee,	1870, Art. 11, Secs. 5-8.
Texas,	1876, Art. 3, Sec. 56; Art. 11, Sec. 4.
Virginia,	1870, Art. 5, Secs. 17, 20.
Washington,	1889, Art. 2, Sec. 28; Art. 12, Sec. 1.
West Virginia,	1872, Art. 6, Sec. 39.
Wisconsin,	1848, amended 1871, Art. 4, Sec. 31.
Wyoming,	1890, Art. 3, Sec. 29.

By the Act of Congress of July 30, 1886, a very complete set of restrictions upon local and special legislation was adopted for the territories.¹

In none of these constitutions, even of those which contain the greatest number of restrictions, nor in the Act of Congress, is there any systematic grouping or arrangement of the subjects of legislation affected thereby, and to this lack of arrangement the great diversity among the various constitutions may in part be owing. To make it possible to ascertain readily what these restrictions are, an arrangement is here attempted, and they have been grouped in what has suggested itself as a natural order, each subdivision being followed by a digest or comparison of cases relating thereto. Many provisions being less complete in some constitutions than in others, and the same provision being often differently worded in different constitutions, all those provisions which obviously concern the same matter have been placed together; all differences in wording being noted as far as practicable and only the most trivial being disregarded.

Surveying, then, the whole field of these restrictions, they may be arranged in thirteen classes, with regard to the subjects affected by them:

- I. As to persons.
- II. As to corporations.
- III. As to rights, privileges, duties, property, etc.

¹ 24 U. S. Stats. at Large, chap. 818, p. 170.

- IV. As to interest, liens, trade, etc.
- V. As to eminent domain, railroads, bridges, ferries, etc.
- VI. As to legal proceedings.
- VII. As to municipal corporations and local government.
- VIII. As to public officers.
- IX. As to highways, public grounds, etc.
- X. As to schools.
- XI. As to taxation.
- XII. As to elections.
- XIII. General restrictions.

Taking these classes in their order, we find that local and special legislation is forbidden in regard to the following matters in the various States, as follows :

I. AS TO PERSONS.

(1) Changing names : Arkansas, California, Florida (of legitimate children, Georgia), Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New York, North Carolina, North Dakota, Oregon, Pennsylvania, South Dakota, Texas, Washington, Wisconsin, Wyoming, Territories.

(2) Authorizing the adoption and legitimation of children : Arkansas, California, Florida, Idaho, Kentucky (adoption only, Louisiana¹), Mississippi, Missouri, Montana (legitimation only, North Carolina), North Dakota, Pennsylvania, Tennessee, Texas, (adoption only, Washington, Wyoming).

Constituting one person the heir of another: Minnesota (heir-at-law, South Dakota, Washington), Wisconsin.

(3) Declaring any person of age: California, Colorado, Idaho, Kentucky, Missouri, Montana, North Dakota, Texas, Washington, Wyoming.

Emancipating minors : Louisiana.

¹ Hence legitimation by special act is allowable there : *Hughes v. Murdock* (Louisiana), 13 So. Rep., 182.

Relieving minors from legal disabilities : Florida.

The removal of the disability of infancy: Mississippi.

Relieving an infant or *feme covert* of disability, or enabling them to do acts allowed only to adults not under disabilities : Kentucky.

(4) Granting divorces: Arkansas, California, Colorado, Florida, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada (or securing alimony, North Carolina), North Dakota, Oregon, Pennsylvania, South Dakota, Texas, Virginia, West Virginia, Wyoming, Territories.

In Michigan, Minnesota, Tennessee and Washington, the legislature is simply forbidden to grant divorces, but as practically this could only be done by a special act in each case, the provision is equivalent to a prohibition of special legislation in the matter.

(5) Restoring to citizenship persons convicted of infamous crimes : California, Idaho, Kentucky, Montana, North Carolina, North Dakota, Wyoming.

The new Mississippi constitution provides (Art. XII, § 253) that the legislature may, by a two-thirds ye-and-nay vote, restore the right of suffrage to any person disqualified by reason of crime, but the reasons therefor must be spread upon the journals.

The Arizona bill of rights prohibits the territorial legislature from pardoning or commuting the sentence of any criminal, the Federal statutes not expressly vesting the power in the governor exclusively.

II. AS TO CORPORATIONS.

Creating (private, Texas) corporations : California, Georgia, Idaho, Iowa, Maryland ; or amending, renewing, or extending their charters : Colorado, Illinois (or explaining the same, Louisiana, Missouri), Montana, Nebraska, New York, North Dakota, Pennsylvania, South Dakota, Texas.

Granting a charter to any corporation, or amending the charter of any existing corporation : Kentucky.

Creating corporations, or diminishing or increasing their powers : Tennessee.

Conferring corporate powers and privileges : Alabama, Arkansas (private corporations, Georgia), Kansas, Minnesota, New Jersey, Ohio, Washington, Wisconsin.

Granting charters : Territories.

The formation of corporations : Mississippi (Art. VII, § 148), and by Art. IV, § 88, this evidently includes laws "under which corporations may be created, organized, and their acts of incorporation altered."

The legislature shall have power to enact a general incorporation act to provide incorporation for religious, charitable, literary and manufacturing purposes, and for the preservation of animal and vegetable food, building and loan associations, and for draining low lands: Delaware.

Corporations shall be formed by general laws : South Carolina.

The legislature shall provide for the organization of corporations by general law : Wyoming.

Exceptions.—Except as to New Orleans or the organization of levee districts and parishes : Louisiana.

Except for municipal purposes : Georgia, Maine, Maryland, Minnesota,¹ Montana, New York, Oregon ; and where (in the judgment of the legislature, Alabama, New York the object cannot be attained otherwise : Alabama, Maine, New York ; and in cases where no general laws exist providing for the creation of corporations of the same general character as the corporation proposed to be created: Maryland.²

Except for cities : Wisconsin.

Except for municipal, manufacturing, mining, immigration, industrial or educational purposes, or for constructing canals, or improving rivers and harbors : Alabama.

¹ See *State v. Gurley*, 37 Minn., 475.

² Hence as the general law "for the formation of savings institutions, trust companies, and guaranty companies," did not grant the powers and rights to act as trustee, executor, administrator assignee, receiver, etc., granted to the Baltimore Trust and Guarantee Co., by special act, such act was held valid: *Reed v. Balto. Trust & G. Co.*, 72 Md., 531.

Except for (municipal, Colorado) educational, charitable, penal, or reformatory purposes: Montana ; where they are to be and remain under the patronage and control of the State : Arkansas, Colorado, Illinois, Nebraska, North Dakota, South Dakota.

Except banking, insurance, railroad, canal, navigation, express and telegraph companies : Georgia.

In New York the chartering of banks by special act is expressly forbidden, and so in Montana and Wyoming as to banks, insurance companies, and loan and trust companies, but these provisions are apparently superfluous, the case being sufficiently covered by the general clause as to corporations.

Any act which contemplates the incorporation of one or any definite number of corporations of a particular kind is special. Thus in Wisconsin an act to enable members of the Methodist Episcopal Church, or of annual conferences, to form and regulate a corporation for the insurance of church and parsonage property, and regulating such corporation as to various matters, was held void, because it evidently contemplated only one such corporation.¹

While the circumstances or needs of a particular locality necessarily affect the character of the corporations to be found there, yet the nature of any class of corporations is, in the main, the same wherever located, and hence general corporation laws, other than municipal, cannot be restricted in their operation to any locality or class of localities. Thus an act to incorporate street railways in cities of certain classes only is a special law.²

The creation of a corporation includes the granting of its corporate powers and privileges, and hence, where special laws creating corporations are forbidden, no corporation can possess any powers and privileges except such as the general law may grant ; and all special laws under-

¹ *State v. Cheek*, 77 Wis., 284. Whether it was also special because it confided the power to incorporate for this purpose to Christians of the Methodist Episcopal persuasion, was not passed upon.

² *Weinman v. Passenger Ry. Co.*, 118 Pa., 192.

taking to confer powers or privileges upon existing corporations formed under the general laws, are unconstitutional.¹ Thus the power of a water company to charge tolls or rates for the use of water being a franchise, this cannot be granted or regulated by an act applying to a particular place only.²

A grant of authority to reorganize a corporation by a sale of its franchises, and the issue of new stock, etc., by the purchasers, would seem to be practically the creation of a new corporation, or, at any rate, a conferring of corporate powers, and so it has been held in Ohio.³ In New York, the case of *Mosier v. Hilton*⁴ contained a *dictum* to the effect that a special act authorizing reorganization did not create a new corporation, but the decision itself rested on the ground that the constitution allowed special incorporation in cases where, in the judgment of the legislature, the object sought could not be attained by a general law, and that the exercise of this legislative discretion could not be inquired into.

A grant of power to individuals, not to take effect until they have formed a corporation, is really a grant to such corporation when formed, and hence cannot be made in a State where corporate powers cannot be granted by special act.⁵

Even where the prohibition of incorporation by special act does not expressly include the amendment of charters, it is clear that the general corporation laws, passed in conformity with the constitutional requirements, can only be amended by equally general acts;⁶ but it is not uniformly settled that special charters cannot be specially amended,⁷

¹ *San Francisco v. Spring Valley W. W. Co.*, 48 Cal., 493; *State v. Lawrence Bridge Co.*, 22 Kan., 438.

² *Spring Valley W. W. Co. v. Bryant*, 52 Cal., 132.

³ *Atkinson v. M. & C. R. Co.*, 15 O. St., 21.

⁴ 15 Barb., 657.

⁵ *San Francisco v. Spring Valley W. W. Co.*, 48 Cal., 493.

⁶ *Waterloo Tpke. Rd. Co. v. Cole*, 51 Cal., 381.

⁷ See prior article on Legislative Discretion as controlled by the Restrictions.

and it has been held with apparent reason that a prohibition of this sort does not affect a special act authorizing a corporation to surrender any of its corporate powers.¹

It is held in Arkansas, Kansas and Ohio, that the prohibition of special acts conferring corporate powers applies to municipal as well as private corporations, there being no separate provision relating to the former in the constitutions of those States,² but this doctrine has never been held in New Jersey,³ and has been abandoned in Tennessee.⁴ In Nebraska the prohibition is held to apply in the case of local bodies other than cities, towns and villages, for which the constitution makes special provision.⁵

(2) Chartering any church or religious denomination : Virginia.

This prohibition is general, without reference to special legislation ; but that, and not a general law for the incorporation of religious bodies, is clearly what is referred to.

(3) Changing the names of corporations : Mississippi.

III. AS TO RIGHTS, PRIVILEGES, DUTIES, PROPERTY, ETC.

(1) Granting to any (private, New York) corporation, association or individual any special or exclusive right

¹ P. & O. Can. Co. v. Commrs., 27 O. St., 14.

² Little Rock v. Parish, 36 Ark., 166; Topeka v. Gillett, 32 Kan., 431; State v. Cincinnati, 20 O. St., 18; State v. Davis, 23 id., 434; State v. Cincinnati, id., 445; State v. Mitchell, 31 id., 607; State v. Constantine, 42 id., 437; State v. Pugh, 43 id., 98; where, however, the Court said, "If the question were *res integra*, by no means could it be said to be clear that this court would hold that Art. 13, § 1, of the constitution (that forbidding special laws conferring corporate powers), has any application to municipal corporations. But according to a series of cases, the provision does extend to municipal as well as private corporations, and since State v. Mitchell (*supra*) this court has regarded the construction of the constitution in that particular to be settled."

³ Pell v. Newark, 40 N. J. L., 71.

⁴ State v. Wilson, 12 Lea (Tenn.), 246. At first the courts thought otherwise. Luehrman v. Tax. Dist., 2 id., 431.

⁵ Clegg v. School Dist., 8 Neb., 178; Dundy v. Richardson Co., id., 508.

(except in Minnesota, New Jersey, New York), privilege or immunity: California, Colorado, Pennsylvania; or franchise: Illinois, Louisiana, Minnesota, Missouri, Montana, Nebraska, New Jersey, New York, North Dakota, South Dakota, Wyoming, Territories; or amending existing charters for such purpose: Wyoming.

Except to a municipal corporation: Minnesota.

This provision is not violated by an act allowing the plaintiff an attorney's fee as costs on recovery of damages in an action against a railroad company for injury to stock caused by defective fencing. Such an act applies throughout the whole State, and to all railroad companies without distinction, in favor of all persons whose stock is injured or killed in this particular way.¹

Nor is this provision violated by an act protecting insurance companies from suit until ninety days after notice of loss, this length of time being considered reasonable in the case of such suits, owing to the peculiar character of the claim, and the difficulty of obtaining evidence in defence.²

A grant of a ferry right to such railroads, terminating at rivers on the borders of the State, as own the landing for the water-craft employed, violates this provision,³ and so does an act confirming the rights of persons using and occupying grounds lying under tidewater for a certain purpose since a given date.⁴

Under this provision it was contended in Illinois that an act to regulate the practice of medicine, requiring practitioners to have certain qualifications, was void, because it excepted those who had been practicing ten years within the State, but the court held that this proviso did not confer anything upon such practitioners, but simply left them

¹ *Perkins v. St. L. I. M. & S. Ry. Co.*, 103 Mo., 52. Same point, *R. R. Co. v. Duggan*, 109 Ill., 357; see also *B. C. R. & N. Ry. Co. v. Dey*, 82 Io., 312.

² *Christie v. Life Indemnity Co.*, 82 Io., 360.

³ *Thomas v. W. St. L. & P. R. Co.*, 40 Fed. Rep., 126.

⁴ *State v. Post* (N. J.), 26 Atl. Rep., 683.

where they were.¹ The same view has since been taken elsewhere.²

In Minnesota, the special appropriation of money out of the treasury to pay the claims of an individual, on condition of his establishing certain facts to the satisfaction of a court, has been held not a "privilege, immunity, or franchise," within the meaning of the constitution, whether such appropriation were made as a gift or in settlement of an obligation.³ It might, perhaps, have been regarded as a "right," but in Minnesota (as in New Jersey and New York) this clause makes no mention of "rights."

An act requiring village councils to designate an official newspaper and have the proceedings and minutes of the council published in it, is not within this provision.⁴

The rights and privileges here contemplated do not include those which result from residence in a particular locality or class of localities. Legislation affecting municipal corporations, for instance, may increase the rights and privileges of their inhabitants, but this is not within this provision.⁵

In New York an act empowering "the lessees" of a certain ferry to acquire the title to property for an additional ferry-slip, was held not to violate this provision. The court was of opinion that, in the first place, this was not a "grant" to a private corporation, as the rights (in this property) of the company who was then lessee would terminate with the lease and pass to the succeeding lessee, since the property could only be used for ferry purposes; and secondly, that at all events it was no grant of an "*exclusive* privilege, immunity or franchise," because there was nothing to prevent the granting of a like power to other corporations.⁶

¹ Williams v. People, 121 Ill., 84.

² State v. Randolph (Ore.), 31 Pac. Rep., 201; State v. Carey, 4 Wash., 424.

³ Dike v. State, 38 Minn., 366.

⁴ State v. Cloquet Village Council (Minn.), 53 N. W. Rep., 1016.

⁵ Ingols v. Plimpton, 10 Col., 535.

⁶ Matter of Un. Fer. Co., 98 N. Y., 139, reversing S. C. 32, Hun. 82.

Special privileges granted to all companies of a particular kind, formed under general laws, are not within this provision, because any of the citizens can form such companies, if they wish.¹

The Organic Act of Washington Territory, now superseded by the State constitution, forbade the territorial legislature to grant special privileges. A game law restricting the hunting in five counties was, reasonably enough, held not to be within the prohibition, for, as the court observed, it granted no privilege except to the animals or to men who were fortunate enough to be alive during the hunting season, which latter privilege was clearly too indirect to be taken account of.² That part of the opinion, however, which treats the law as general because it affected equally all persons who happened to be at any time in those counties, is opposed to the current of the best authorities.

Those constitutions which contain few or no restrictions upon special legislation usually cover this point, at least, by a prohibition, in the bill of rights or elsewhere, of any legislative action either increasing or diminishing the rights of certain individuals to the exclusion of others. Thus in Georgia the legislature cannot vary in any particular case any general law affecting private rights, except with the free consent in writing of all persons to be affected thereby.³ This provision has been held to forbid a special joint resolution fixing the amount of a public officer's liability, and directing the government to issue executions on such officer's bonds;⁴ but it has been held not to affect a pre-existing act, making railroad companies liable to their officers, agents and employees for injuries sustained by the negligence of other officers, agents or employees,

¹ *Holmes v. Smythe*, 100 Ill., 413.

² *Haynes v. Terry*. 2 Wash. Ty., 286.

³ Ga. Const., Art. I, Sec. 4, Par. 1. But this does not apply to a law making the tax collector in one county *ex-officio* sheriff for a certain purpose, as it does not affect the sheriff's private rights: *Burton v. Morgan*, 84 Ga., 627.

⁴ *Mayo v. Renfroe*, 66 Ga., 408.

such act being general because it applied to all railroad companies.¹ A pre-existing act, authorizing a particular mode of service on a certain foreign corporation, and a subsequent amendment of such as a minor point, have also been held outside of this provision, apparently because it was not retroactive.²

In Kansas and Ohio unalterable and irrevocable special privileges and immunities are alone forbidden.³ Hence a city charter can confer authority over the streets, whereby the city can itself authorize a railroad company to lay down tracks in them, the authority so granted to the city being, of course, revocable.⁴

The consolidation of corporations, being the formation of a new corporation, a corporation so formed is subject to this provision, even though those of which it was formed were not. Hence if a railroad company, chartered under a former constitution with no restriction on its rates of fare, consolidates with another, the rates which the new company is allowed to charge can be lowered by a general law.⁵

The Kentucky constitution of 1850⁶ declares that "no man or set of men are entitled to exclusive separate emoluments or privileges from the community but in consideration of public services." The Supreme Court of that State held that a grant of an exclusive right to manufacture and supply gas in a city violates this provision, as the lighting of the streets is not a public service, but within the control of the municipality,⁷ but this was reversed by the Supreme Court of the United States.⁸ An act empowering a trust company to sell land in the foreclosure of mortgages, without the intervention of the court, was also held void,

¹ *Ga. R. & B. Co. v. Oaks*, 62 Ga., 410.

² *N. & C. R. Co. v. McMahon*, 70 Ga., 585.

³ *Kan. Const.*, B. of Rts., Sec. 2; *O. Const.*, Art. I, Sec. 2.

⁴ *Atch. S. R. Co. v. Mo. Pac. R. Co.*, 31 Kan., 660.

⁵ *Shields v. Ohio*, 95 U. S., 319.

⁶ *Art. XIII*, § 1.

⁷ *Citizens G. L. Co. v. Louisville Gas Co.*, 81 Ky., 263.

⁸ *Louisville Gas Co. v. Citizens G. L. Co.*, 115 U. S., 683.

the company having performed no public service to the State.¹ This provision has been held not to affect grants of strictly private privileges, and hence a grant of the right to hold a lottery (lotteries being forbidden by the general law) has been upheld in Kentucky.²

In South Carolina it is provided that no person shall be subjected in law to any other restraint or disqualification in regard to his personal rights than such as are laid upon others under like circumstances.³ Hence while a certain county may be excepted from the provisions of a general stock law, such special exception cannot be made to affect a certain citizen only to the exclusion of others, according as they may or may not have conformed to the general law, the fact of such conformity being held too trivial to constitute any real difference in circumstances.⁴

In South Dakota it is provided that "no law shall be passed granting to any citizens, class of citizens, or corporations, privileges and immunities which upon the same terms shall not equally belong to all citizens or corporations." This has been held to invalidate a law for the organization and government of State banks, prohibiting the business of banking from being carried on in any town of 500 inhabitants or over, except after compliance with the act and organization under it.⁵

In Tennessee it is provided that "the legislature shall have no power to suspend a general law for the benefit of any particular individual⁶ [Alabama, Arkansas and Mississippi have the same provision and extend it to corporations and associations],⁷ nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to individuals rights, privileges, immunities or exceptions other than such as may be

¹ *Kentucky Trust Co. v. Lewis*, 82 Ky., 579.

² *Commonwealth v. Whipps*, 80 Ky., 269.

³ *Const. S. C., Art. I., § 12.*

⁴ *Utsey v. Hiott*, 20 S. C., 260.

⁵ *State v. Scongal (S. Dak.)*, 51 N. W. Rep., 858.

⁶ This does not apply to municipal corporations: *Williams v. Nashville*, 87 Tenn., 487.

⁷ *Const. Ala., Art. IV, § 23; Const. Ark., Art. V, § 25.*

by the same law extended to any other member of the community who may be able to bring himself within the provisions of such law." ¹ This has been held to forbid an act making it a misdemeanor punishable by fine, to make betting books or sell pools on any race, except by authority of a lawfully chartered turf, fair or other like association, and then only in the county in which the association or fair was located, such act being regarded as creating a new privilege. ²

Under this same provision an act forbidding any person engaged in the business of a barber to shave, shampoo, etc., or keep open his bath-room on Sunday, was held void, because it operated as a restriction upon barbers only, and incidentally conferred a privilege upon all other people. ³ But an election law, applicable only to counties of over 70,000 inhabitants, and to cities with a population of over 9000, has been held not to violate this provision, because no county or city could be said to be permanently excluded from its provisions, all of them being theoretically capable of eventually reaching the required number of inhabitants. ⁴

(2) Changing the law of descent: California, Colorado, Illinois, Montana, Nebraska, New Jersey, North Dakota, West Virginia, Wyoming, Territories; of descent and succession: Mississippi; of descent, distribution or succession: Kentucky.

An act affecting the descent of real estate to non-resident aliens is not special, even though its operation is limited to those not protected by treaties. ⁵

(3) Affecting the estates of minors or other persons under disability: California, Idaho, Kentucky, Louisiana, Missouri, Montana, North Dakota (except after notice to all parties in interest, Pennsylvania), Texas, Wyoming; or deceased persons: California, Kentucky, Montana, North Dakota, Wyoming; or *cestuis que trustent*: Kentucky.

Providing for the sale or conveyance (or leasing, en-

¹ Const. Tenn., Art. XI, § 8.

² *Daly v. State*, 13 Lea (Tenn.), 228.

³ *Ragio v. State*, 86 Tenn., 272.

⁴ *Cook v. State*, 90 Tenn., 407.

⁵ *Wunderle v. Wunderle* (Ill.), 33 N. W. Rep., 195.

cumbering or other disposition, Kentucky) of the real estate of minors or other persons under disability: California or of decedents, Florida, Kentucky), Illinois, Indiana, Maryland, Minnesota, Montana, Nebraska, New Jersey, North Dakota, Oregon, South Dakota, Washington, West Virginia, Wisconsin, Wyoming, Territories; or the mortgage of the same: Colorado, Minnesota, Montana, Nebraska, North Dakota, Oregon, South Dakota, Washington, West Virginia, Wisconsin, Wyoming, Territories; by executors, administrators, guardians and trustees: Indiana, Maryland, Oregon.

Concerning the settlement or administration of any estate, or sale or mortgage of any property of any infant, or of a person of unsound mind, or of a deceased person: Mississippi.

Authorizing any minor to sell, lease or encumber his or her property: California, Idaho, Washington.

A provision of the above character, as contained in the Kentucky constitution of 1850, has been held not to affect an act granting the Louisville Chancery Court power to correct errors or permit amendments in any case which had been or should be brought before it for the sale of minors' real estate, even after the decree had been made and the sale had taken place. The act was decided not to be an attempt to sell such real estate by special legislation, but to be a law of general import, to authorize the perfecting of irregular proceedings which had been intended to comply with the general act, but through inadvertence failed to do so.¹

The phrase "other persons under disability" does not include associations, nor probably persons in prison or out of the State.²

¹ *Marshall v. Marshall*, 4 Bush. (Ky.), 248. It is to be observed that the act, though in certain respects general, concerned proceedings in a court of local jurisdiction, and was therefore unquestionably a local law, but this point does not seem to have been raised. The Kentucky constitution did not in terms prohibit local legislation in regard to sales of infants' real estate, but it did require such matters to be regulated by the courts under general laws.

² *Haps v. Hewitt*, 97 Ill., 498.

In New York there is no restriction upon special legislation authorizing the sale of infants' real estate.¹

(4) Authorizing the sale of church property, or property held for a charitable use : West Virginia.

(5) Authorizing or providing for the sale or conveyance of any real estate : Michigan.

This has been held not to apply to a law authorizing a road company to mortgage its road.²

(6) Giving effect to informal or invalid deeds : Colorado, Montana, North Dakota, Wyoming ; deeds, leases, or other instruments : Idaho ; deeds or wills : Florida, Maryland, Texas ; deeds, wills or other instruments : California, Kentucky, Washington ; deeds, wills or any illegal disposition of property : Louisiana.

(7) Remitting fines, penalties, or forfeitures : California, Colorado, Idaho, Illinois, Kentucky, Louisiana, Missouri, Montana, Nebraska, North Dakota, Pennsylvania, South Dakota, Texas, Washington, West Virginia, Wyoming, Territories.

(8) Releasing or extinguishing, in whole or in part, the indebtedness, liability, or obligation of any corporation or person to the State or any municipal corporation : California, Idaho,³ Montana, North Dakota, Washington, Wyoming.

In South Dakota this prohibition is made without reference to special legislation, but it can hardly have any other application.

Releasing from debts due the State, unless recommended by the governor or the treasury department : Maryland.

A collateral inheritance tax law, with a proviso that it should apply to all cases where the tax had been already claimed of the husband of any decedent, but not actually

¹ See *Brevoort v. Grace*, 53 N. Y., 245; *In re Field*, 17 N. Y. Supp., 19.

² *Joy v. J. & M. Pl. R. Co.*, 11 Mich., 155.

³ In Idaho the prohibition, as printed, concerns the indebtedness, etc., of any corporation or person "in the State or any municipal corporation therein," but this would seem to be a printer's or copyist's error.

paid by him, was held not to be a special release of other parties from debts due by them to the State.¹

(9) Refunding money paid into the State treasury: California, Idaho, Montana, North Dakota; money legally so paid: Kentucky, Louisiana, Maryland, Missouri, Pennsylvania, Texas, Wyoming.

(10) Auditing or allowing any private claim or account: Michigan.

(11) Authorizing suits against the State, or making compensation to any person claiming damages against the State: Oregon.

(12) Exempting property from taxation: California, Idaho, Louisiana, Mississippi, Missouri, North Dakota, Pennsylvania, Texas, Wyoming; or from levy or sale: Mississippi.

(13) Releasing taxes or titles to forfeited lands, or authorizing deeds to be made for lands sold for taxes: West Virginia.

(14) Exempting any person from jury, road or other civil duty (and no person shall be exempted therefrom by force of any local or private law): Mississippi.

IV. AS TO INTEREST, LIENS, TRADE, ETC.

(1) Regulating the rate of interest: California, Colorado, Idaho, Illinois, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New York, North Dakota, Pennsylvania, Texas, West Virginia, Wyoming, Territories.

The rate established by the legislature to be equal and uniform throughout the State: Tennessee.

The restriction of special legislation as to the rate of interest applies only to contests between individuals, and not to taxes. A special rate of penalties for non-payment of taxes and assessments is valid,² and even when imposed by a local law.³

An act providing that no premiums, fines, or interest

¹ *Montague v. State*, 54 Md., 481.

² *People v. Peacock*, 98 Ill., 172; *McChesney v. People*, 99 id., 216.

³ *New Orleans v. Firemen's Ins. Co.*, 41 La. Ann., 1142.

on premiums of building associations should be deemed usurious, has been held not within this provision, the premiums, etc., being in the nature of liquidated damages for failure to comply with the contract.¹

(2) Authorizing the creation, extension (enforcement or release: Kentucky) or impairing of liens: California, Idaho, Kentucky, Missouri, Montana, North Dakota, Pennsylvania, Texas.

The character of a lien not differing with regard to locality, lien laws for any particular class of localities are local and invalid;² but an act authorizing liens to be filed for paving assessments in cities of a certain class is valid, street paving being a matter of municipal concern, and hence capable of being regulated as to all its details, by separate laws for each class of cities³ and the same is true of municipal taxes.⁴

An act, providing, however, that taxes or other claims in cities of a certain class shall become liens without the same procedure required in other cases, is local,⁵ and the same is probably true of an act making tax liens perpetual in a class of cities.⁶

(3) Regulating trade, labor, mining, or manufacturing: (agriculture, not mining: Louisiana) Kentucky, Missouri, Pennsylvania, Texas.

An act providing that no boatload of coal, coke, etc., should be sold anywhere in the State, until it had been inspected is general, and not a special regulation of trade.⁷

(4) For the protection of game or fish: Colorado, Illinois, Kentucky, Nebraska, North Dakota, Territories.

Local laws for this purpose are expressly allowed by the Texas constitution.

¹ *Holmes v. Smythe*, 100 Ill., 413; *Freeman v. Ottawa B. A.*, 114 id., 182; *Winget v. Quincy B. A.*, 128 id., 67.

² *Davis v. Clark*, 106 Pa., 377; *Phila. v. Haddington*, 115 Pa., 291.

³ *Scranton v. Whyte*, 148 Pa., 419.

⁴ *Smith v. Meadow Brook Brewing Co.*, 3 Lack. Jur. (Pa.) 145.

⁵ *Safe Deposit & Trust Co. v. Fricke*, 152 Pa., 231.

⁶ *Philadelphia v. Kates*, 160 Pa., 30.

⁷ *State v. P. & S. C. Co.*, 41 La. Ann., 405.

V. AS TO EMINENT DOMAIN, RAILROADS, BRIDGES, FERRIES, ETC.

(1) Granting to any person or corporation the right to lay down a railroad track: (or tramway: Kentucky) Colorado Missouri, New Jersey, New York,¹ North Dakota, Pennsylvania; or amending existing charters for such purposes: Illinois, Kentucky, Nebraska, Wyoming, Territories.

Conferring the power to exercise the right of eminent domain, or granting to any person, corporation, or association the right to lay down railroad tracks in any other manner than that prescribed by general law: Mississippi.

Authorizing the construction of street passenger railroads in any incorporated town or city: Louisiana.

Such a right cannot be granted as an enlargement of corporate powers already possessed. An act granting the right to construct a railway in tubes of a certain size, at a certain distance from the curb-line and building-line, cannot be so amended as to give a right to construct railways without tubes, and occupying far more space.²

An act authorizing the council of a particular city to vacate a certain street for the purpose of the erection of a railway station by a particular railroad company, has been held not to grant any right to lay down tracks, nor to confer any exclusive privilege, but at most only to give the council additional power, a thing not forbidden by the constitution.³

(2) Relating to (or licensing) ferries and bridges, and chartering ferry and bridge companies: (ferries only: Florida) Louisiana, Missouri, Pennsylvania, Texas; ferries and toll-bridges: Colorado, Illinois, Nebraska, West Virginia, Territories; ferries, bridges and roads: California; ferries, bridges and toll-roads: Montana; ferries, toll-bridges and toll-roads: North Dakota; chartering or licens-

¹ This includes elevated railroads, *People v. Loew.*, 102 N. Y., 471.

² *Astor v. N. Y. Arcade R. Co.*, 113 N. Y., 93.

³ *Weinckie v. N. Y. C., &c., R. R. Co.*, 68 S. C. N. Y., 619.

ing ferries, bridges or (toll: Wyoming) roads: Idaho, Wyoming.

Licensing companies or persons to own or operate ferries, bridges, roads or turnpikes; affecting toll-gates or regulating tolls: Kentucky.

Establishing bridges and ferries: Georgia.

Providing for building bridges, and chartering companies for such purposes: New York.

Authorizing any person to keep ferries over streams wholly within the State: Minnesota, South Dakota, Washington, Wisconsin.

Granting to any person, corporation or association, the right to have any ferry, bridge, road or fish-trap: Mississippi.

Except over streams which bound the State: Louisiana, Missouri (or the East River or the Hudson below Waterford: New York), Pennsylvania, Texas.

By a provision of this character the legislature is forbidden to charter, license or establish a ferry, directly or indirectly, by special laws.¹

But in New York, where providing for the building of bridges is alone prohibited, an act legalizing the action of a town board and its officers, in regard to the payment for a certain bridge, has been held not within the restriction.²

(3) Relating to stock laws, water-courses or fences: Mississippi.

Regulating fencing or the running at large of stock: Kentucky.

(4) Declaring streams navigable, or authorizing the construction of booms or dams therein, or to remove obstructions therefrom: Kentucky.

VI. AS TO LEGAL PROCEEDINGS.

(1) Regulating the practice³ and jurisdiction (and cir-

¹ *Frye v. Partridge*, 82 Ill., 267.

² *Wrought Iron Bridge Co. v. Attica*, 56 S. C. N. Y., 513.

³ By the Kentucky constitution the practice of circuit courts in continuous session may, by a general law, be made different from that of circuit courts held in terms.

cuits : Kentucky) of courts : Kentucky, Louisiana, Missouri, Pennsylvania, Texas ; the practice only : California, Colorado (except municipal courts : Florida), Illinois, Indiana, Mississippi, Montana, Nebraska, Nevada, North Dakota, Oregon, West Virginia, Kentucky, Territories.

"The practice in courts of justice" means the form, manner and order of conducting and carrying on suits and prosecutions, civil and criminal. Hence, an act creating a court, and conferring jurisdiction upon it, does not undertake to regulate practice;¹ and an act regulating the terms of court in certain counties has been held to affect neither practice nor jurisdiction;² but "practice" in this sense is held to include pleading.³ A regulation of the practice in all of a particular class of cases is not special; and, hence, a law requiring an affidavit of defence on the merits to be filed with a demurrer to attachment proceedings against water craft, does not violate the restriction of special laws concerning practice.⁴ By parity of reasoning an act authorizing any surety company to be accepted as sole and sufficient security, on appeal,⁵ or one providing for the dissolution of insurance companies on insolvency,⁶ applying as it does to all such companies, is not a special regulation in regard to practice; and the same is true of a mechanic's lien law.⁷

This provision is violated by an act providing that in a particular criminal court no special judges should be elected or selected from the members of the bar to sit on the trial of a cause on account of the incompetency of the judge, but that in such a case the judge might, by order of the court, set the cause down for trial, and request the judge of another court to try it.⁸

¹ *Combs v. State*, 26 Ind., 98.

² *Cox v. State*, 8 Tex. App., 254.

³ *People v. Cent. Pac. R. R. Co.*, 83 Cal., 393.

⁴ *Johnson v. C. & P. El. Co.*, 105 Ill., 462.

⁵ *Cramer v. Tittle*, 72 Cal., 12.

⁶ *Chicago Life Ins. Co. v. Auditor*, 101 Ill., 82.

⁷ *Summerlin v. Thompson* (Fla.), 12 So. Rep., 667.

⁸ *State v. Kring*, 74 Mo., 612.

Under this provision the practice cannot be different in any class of localities from what it is elsewhere in the State, because the right to avail oneself of the machinery of the law is a personal one, in no way affected by the character of a man's place of residence.¹

Moreover, the practice cannot differ in regard to matters which do not materially differ among themselves. Thus, a special form of complaint in actions to collect taxes on railroads situate in more than one county is inadmissible under this provision, and an act providing for such form of complaint is special, even though found in a general code. The fact that the constitution of California provides a special method of assessing for taxation the property of such railroads has been held not to affect the matter.²

An act requiring the plaintiff in an action for slander or libel to file an undertaking, with sureties, is not special.³

The constitutions of Colorado, Illinois and Nebraska contain a general provision in regard to courts (expressed in almost indetical language in each case) to the following effect:

"All laws relating to courts shall be general, and of uniform operation throughout the State, and the organization, jurisdiction, powers, proceedings, and practice of all courts of the same class or grade, so far as regulated by law, and the force and effect of the proceedings, judgments, and decrees of such courts severally, shall be uniform." ⁴

An act regulating the practice of all courts of record in the State (*e. g.*, creating a "short cause calendar," and giving such causes precedence) is not special within the meaning of this provision,⁵ which has also been held not

¹ Ruan Street, 132 Pa., 257, 277.

² *People v. Cent. Pac. R. R. Co.*, 83 Cal., 393.

³ *Smith v. McDermott*, 93 Cal., 421.

⁴ Const. Col., Art. VI, 28; Const. Ill., Art. VI, 29; Const. Neb., Art. VI, 19; see *Kilian v. Clark*, 9 Ill. App., 426.

⁵ *Jensen v. Fricke*, 133 Ill., 171; *L. N. A. & C. R. R. Co. v. Wallace*, 136 id., 87.

to cover a law conferring upon the Denver authorities power exclusively to prohibit and suppress dance houses, etc., because such a law does not deal with courts or their jurisdictions, but simply grants the city council certain police powers.¹ Nor does this provision forbid an act exempting all municipal corporations from giving bond on taking appeals.² An act creating superior courts in cities and incorporated towns, and giving them a jurisdiction different from that of the district courts, is also outside the scope of this provision, because the superior and district courts are not of the same class or grade.³

Under this provision there may be different classes of police courts, and if a statute in regard to any class be applicable to all cities of the size designated, it is valid ;⁴ but the legislature cannot give the county courts concurrent jurisdiction with the circuit courts as to certain kinds of cases, in counties where probate courts are or may be established. County courts constitute a class of courts, and those in counties containing probate courts form a part of this class only, and cannot be legislated for by themselves.⁵

A law limiting the number of the justices of the peace in cities of the first class to three, to be elected by the voters of certain districts to be created by the county commissioners, affects neither the organization of justice's courts nor their jurisdiction, power, etc., but only the method of selecting the persons whose duty it shall be to exercise the functions of courts, a matter apparently not within the above provision.⁶

Uniformity in the jurisdiction and powers of courts is also required by the Georgia constitution, but this does not prevent special legislation establishing courts in one or

¹ *Rogers v. People*, 9 Col., 450.

² *McClay v. Lincoln*, 32 Neb., 412.

³ *Darrow v. People*, 8 Col., 417; *Ingols v. Plimpton*, 10 id., 535.

⁴ *McInerney v. Denver*, 17 Col., 302.

⁵ *Klokke v. Dodge*, 103 Ill., 125.

⁶ *State v. Berka*, 20 Neb., 375.

more counties, provided the jurisdiction and powers are in conformity with the general act.¹

(2) Regulating the rights, powers, duties or compensation of the officers of courts: Kentucky.

(3) Regulating the jurisdiction and duties of alderman, justices of the peace, police justices (or magistrates) and constables: California, Colorado, Illinois, Indiana, Montana, Nebraska, North Dakota, Wyoming, Territories; justices of the peace and constables: Indiana, Nevada, Oregon.

Regulating the practice or jurisdiction of alderman, justices of the peace, commissioners, arbitrators, etc.: Missouri, Pennsylvania, Texas.

Regulating the fees, or extending the powers and duties of alderman, justices of the peace, magistrates or constables: Missouri, Pennsylvania, Texas.

The above provision as to fees is infringed by an act allowing prothonotaries and sheriffs within six years after the expiration of their terms to sue for their fees before justices of the peace, such act being designed for a particular purpose and applicable only to particular persons, and to them for a limited period only.²

Uniformity as to the jurisdiction and duties of justices of the peace is further secured in Illinois by a special provision of the constitution. Taking both provisions together, the uniformity required is held to include territorial uniformity, territory being essential to jurisdiction. Hence, though justices' districts need not be uniform in size, they must consist of counties or townships, not both. If the county be the basis of jurisdiction, one county cannot be divided into two districts.³

(4) Concerning any civil or criminal action: Louisiana.

¹ *Lorentz v. Alexander*, 87 Ga., 444.

² *Strine v. Foltz*, 113 Pa., 349.

³ *People v. Meech*, 101 Ill., 200. Besides the failure of the act, under review in that case, to secure uniformity, it was also special in that it changed the existing laws as to one county only (that in which two districts were established), so that it was practically a law for that county alone.

(5) Punishing any crimes or misdemeanors: California, Florida, Idaho, Indiana, Kentucky, Montana, Nevada, North Dakota, Oregon, Wyoming, Territories.

A penal law forbidding the transaction of business on Sunday, except that of hotels, boarding houses, barber shops, etc., is not made a special law by this exception.¹

(6) Changing the venue in any criminal action: Arkansas; civil or criminal: California, Colorado, Florida, Idaho, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New York, North Dakota, Oregon, Pennsylvania, Texas, Wyoming, Territories.

An act permitting changes of venue from the St. Louis Criminal Court for any cause for which such changes may be allowed from other criminal courts of the State, was held to violate the above clause;² but it may be questioned whether this particular feature of the act, conforming the practice of one criminal court to that of other like courts, was not, in its spirit, general legislation.

(7) Changing the rules of evidence in any judicial proceeding or inquiry: Colorado, Louisiana, Missouri, Montana, North Dakota, Pennsylvania, Texas, Wyoming.

This provision has been held in Missouri to refer only to a change of the rules of evidence with respect to causes pending when the change is made, not to any change in the rules in regard to particular matters as to which special legislation is allowed, and hence not to apply to special municipal charters which provided that in the case of improvements the assessment bills should be *prima facie* evidence that the work was done for which the assessment was made.³

(8) Providing or changing methods for the collection of debts and enforcement of judgments, and prescribing the effect of judicial sales: Louisiana, Missouri, Pennsylvania, Texas.

¹ *Ex parte Koser*, 60 Cal., 187.

² *State v. Kring*, 74 Mo., 612.

³ *Eyerman v. Blaksley*, 78 Mo., 145.

This provision is not violated in Texas by a special charter, exempting the city incorporated thereby from liability to garnishment proceedings, the constitution of Texas allowing special charters for cities of over 10,000 inhabitants, and all the restrictions on special legislation contained therein being subject to the proviso, "except as otherwise provided in this constitution."¹

An act allowing an attorney's fee to be recovered as costs, on small claims against railroad companies for stock killed, is sufficiently general, and is not a special law changing the method of collecting debts.²

(9) Prescribing limitations of civil actions:³ Montana, North Dakota, Wyoming; or criminal actions: Colorado, Missouri; or both: California, Idaho, Kentucky, Texas, Washington.

A statute of limitations excepting actions on contracts already executed is general.⁴

(10) Summoning or empanelling grand or petit jurors: California, Colorado, Florida, Idaho, Indiana, Kentucky, Nebraska, North Dakota, Oregon, Texas, West Virginia, Wyoming, Territories; and providing for their compensation: California, Idaho, Indiana, Kentucky, Nebraska.

Selecting, drawing, summoning or empanelling them: Mississippi, New Jersey, New York.⁵

Under a provision of this character, a law providing that in certain counties the grand juries shall contain more members than in others is void,⁶ but an act for the empan-

¹ *Dallas v. Western Electric Co.* (Tex.), 18 S. W. Rep., 552, 21 id., 933.

² *G. C. & S. F. R. R. Co. v. Ellis*, (Tex.), 18 S. W. Rep., 723.

³ An act limiting the time for the enforcement of the liability of municipalities and townships on their subscriptions in aid of railroads is not a special statute of limitations for the benefit of particular corporations and applicable to a single class of municipal contracts: *People v. Granville*, 104 Ill., 285. The constitution of Illinois, under which this decision was rendered, does not specifically forbid special statutes of limitations, but the contention may have been that the act violated the provisions in regard to the practice and jurisdiction of courts or in regard to cases where a general law could be made applicable.

⁴ *McKean v. Archer*, 52 Fed. Rep., 791.

⁵ See *People v. Petrea*, 92 N. Y., 128.

⁶ *Territory v. Baca*, (N. M.), 30 Pac. Rep., 864.

elling of two different juries, one to serve on the part of the United States for the district, and one to serve on the part of the territory for the county, is general, as it applies to the whole territory.¹

VII. AS TO MUNICIPAL CORPORATIONS, AND LOCAL ADMINISTRATION AND GOVERNMENT.

(1) Incorporating villages, cities and towns, and amending their charters: Illinois, Missouri, Nebraska, North Dakota, Pennsylvania, South Dakota (except cities of over 10,000 inhabitants: Texas), West Virginia, Territories; cities and towns: Mississippi; villages and towns: Washington, Wisconsin.

Incorporating cities and towns: Iowa.

Organizing cities, towns and villages: Kansas.

Incorporating villages: New York.

Under the constitution of California, corporations for municipal purposes cannot be created by special laws, and the legislature is required to provide by general laws for the incorporation and organization of cities and towns and their classification in proportion to population, the method of incorporation being prescribed in the constitution.²

In Colorado, general laws for the organization and classification of cities and towns are required.

It is held in Arkansas, Kansas and Ohio that the prohibition of special acts conferring corporate powers applies to municipal as well as private corporations³ (and so in Nebraska, as to local bodies, other than villages, cities and towns),⁴ but the reverse is held in New Jersey and Tennessee.⁵

In the constitutions of Alabama, Georgia, Maine,

¹ U. S. v. De Amador, (N. M.), 27 Pac. Rep., 488.

² Cal. Const., Art. XI, § 6; see *Thomason v. Ashworth*, 73 Cal., 73.

³ *Little Rock v. Parish*, 36 Ark., 166; *Topeka v. Gillett*, 32 Kan., 431; *State v. Cincinnati*, 20 O. St., 18; *State v. Davis*, 23 id., 434; *State v. Cincinnati*, id., 445; *State v. Mitchell*, 31 id., 607; *State v. Constantine*, 42 id., 437; *State v. Pugh*, 43 id., 98.

⁴ *Clegg v. School Dist.*, 8 Neb., 178; *Dundy v. Richardson Co.*, id., 508.

⁵ *Pell v. Newark*, 40 N. J. L., 71; *State v. Wilson*, 12 Lea (Tenn.), 246.

Maryland, Minnesota, Montana, New York and Oregon municipal corporations are expressly excepted from the prohibition of special legislation ; and the same exception occurs as to cities in the Wisconsin constitution, and in that of Louisiana as to the city of New Orleans and the organization of levee districts and parishes.¹

It is held in Illinois that the words "villages, cities and towns" are not meant to cover every sort of public corporation for administrative purposes, and hence that a sanitary district or a drainage district may be incorporated by special act, and different systems for the construction, maintenance and repair of drains and sewers may be provided.²

Under the prohibition stated above all grants of corporate powers to particular municipal corporations are held invalid. Thus an act authorizing a city to appoint a board of control,³ transferring a city from one class to another, or allowing a city of one class to incorporate as of another class,⁴ is void ; and this rule has been applied to the increase or reduction of the area of a city, such change necessarily contracting or enlarging the sphere of municipal jurisdiction, and constituting in effect an amendment of the charter.⁵ Thus in *Little Rock v. Parish*⁶ the court said : "It is literally true that such action [reduction of area] would confer no power whatever, but constitutions, like statutes and private writings, are to be construed according to their plain intent, derived from the language and context. Of what avail would it be to prohibit the legislature from conferring corporate powers upon favorite municipalities, if it might first confer them by general acts on all in

¹ See *supra*.

² *Owners of Lands v. People*, 113 Ill., 296 ; *Wilson v. Trustees*, 133 id., 443.

³ *State v. Pugh*, 43 O. St., 98.

⁴ *Brown v. Milliken*, 43 Kan., 769.

⁵ *Little Rock v. Parish*, 36 Ark., 166 ; *Gray v. Crockett*, 30 Kan., 138 ; *State v. Cincinnati*, 20 O. St., 18 ; see also *People v. San Diego*, 85 Cal., 369.

⁶ 36 Ark., 166.

the State, and then by special acts trim down to a general level and shackle all not meant to be favored? Besides, a distinction in this regard between a power to increase and a power to diminish the area of cities can be rested on no plausible foundation of reason," the constitution indicating an intention that all municipalities of the same class should be on the same footing as to their mode of creation, acquisition of increased territory, powers of government, etc." In Ohio, however, detaching part of the territory of a municipal corporation and attaching it to an adjoining township is held to be outside the prohibition of the conferring of corporate powers by special act.¹

Legalizing an unauthorized issue of city bonds, however, confers no corporate power, but merely recognizes the city's existing legal obligation to repay the money received for the bonds, and provides a means for enforcing that obligation.²

The general prohibition of special laws conferring corporate power is not usually held to apply to grants of power to counties and local bodies which are not strictly corporations. Thus, in Arkansas, a special law in regard to the issuing of county bonds was sustained, a county being held not to be a corporation, but merely a political division of the State invested, for some purposes of local government, with a few functions characteristic of corporate existence.³

Similarly in Kansas, the Topeka Board of Education being regarded as a *quasi* corporation only, an act authorizing it to issue bonds for new school buildings was held not to confer corporate powers.⁴ In Ohio it has been held that no corporate powers were conferred by an act authorizing the Court of Common Pleas of one county to appoint three commissioners with power to appoint, control and discipline the police force of Xenia, and to that end to

¹ *Metcalf v. State* (O.), 31 N. E. Rep., 1076.

² *Read v. Plattsmouth*, 107 U. S., 568.

³ *Pulaski Co. v. Reeve*, 42 Ark., 54.

⁴ *Knowles v. Board of Education*, 33 Kan., 692.

become an organized body, to make rules for their own government, etc.;¹ nor by an act authorizing county commissioners to grant further time for the completion of free turnpike roads, and providing for the payment for the same;² nor by an act authorizing the sinking fund trustees of a city to re-district it.³ And so it has been held in Minnesota of an act authorizing a board of water-commissioners to contract for water-works in their own name, as the representative of the city, the contract being held to be made in substance and effect *with* the city as well as for it.⁴

In Nebraska, on the other hand, corporate powers were held to be conferred by acts authorizing a school district to build a school-house and issue bonds to pay for it,⁵ and authorizing a city precinct to issue bonds for the construction of a court-house, and to assess taxes therefor.⁶ But in the same State an act prescribing the boundaries of a new county, and providing the machinery for its organization, was held not strictly to confer corporate powers, but rather to provide the means whereby they might be exercised,⁷ and the Supreme Court of the United States has sustained a Nebraska statute, authorizing a county to issue bonds in payment of a valid debt previously contracted.⁸

As to what constitute "municipal purposes," for which in some States special incorporation is allowed, it has been held that the improvement of the navigation of certain rivers, on which certain cities are situated, is a municipal purpose, and the creation for that purpose, of a corporation composed of those cities, with power to borrow money and levy taxes, is within the exception.⁹

¹ *State v. Baughman*, 38 O. St., 455.

² *Foster v. Commissioners*, 9 O. St., 540.

³ *State v. Pugh*, 43 O. St., 98.

⁴ *Morton v. Power*, 33 Minn., 521.

⁵ *Clegg v. School Dist.*, 8 Neb., 178.

⁶ *Dundy v. Richardson Co.*, 8 Neb., 508.

⁷ *State v. Piper*, 17 Neb., 614.

⁸ *Sherman Co. v. Simons*, 109 U. S., 735.

⁹ *Cook v. Port of Portland*, 20 Ore., 580.

(2) Providing for the bonding of cities, towns, precincts, school districts or other municipalities: West Virginia.

(3) Erecting new counties, townships or boroughs, changing their lines of limits,¹ or changing school districts: Pennsylvania.

Changing county lines: Georgia; except in the creation of new counties: Washington.

Erecting new townships, or changing the lines of townships or school districts: Missouri.

(4) Locating or changing county seats (changing only: California, Minnesota, Washington²), Colorado, Idaho, Illinois, Iowa, Kentucky, Minnesota, Missouri, Montana, North Dakota, Pennsylvania, South Dakota, Texas, West Virginia, Wisconsin, Wyoming, Territories.

Unless the law authorizing the change shall require that two-thirds of the legal votes cast at a general or special election shall designate the place to which the county seat shall be changed. *Provided*, that the power to pass a special law shall cease as long as the legislature shall provide for such change by general law. *Provided further*, that no special law shall be passed for any one county oftener than once in six years: Idaho.

The legislature cannot pass an act to relocate county seats in counties where they have been located by a vote of less than a majority of all the electors voting thereon,³ nor in counties where, at the time of the act, the courthouse and jail are not worth \$35,000, such classifications not being permissible.⁴

It has been held in Florida that locating a county seat

¹ For a general law, amending a possibly local act as to the limits of boroughs see *In re Pottstown*, 117 Pa., 538.

² In the Washington constitution the language is, "locating county seats, providing this shall not be construed to apply to the creation of new counties." This clearly refers to "changing" county seats, as distinguished from "locating" them, a term used in the other constitutions in the case of new counties only.

³ *Adams v. Smith*, 6 Dak., 94.

⁴ *Edmonds v. Herbrandson* (N. D.), 50 N. W. Rep., 970.

is not regulating county affairs, and hence that special legislation as to the former, not being expressly forbidden, is not unconstitutional;¹ but in Indiana such location or change has been considered a matter to which a general law can be made applicable, and, therefore, not a proper subject for special legislation.² Where a county seat cannot be changed except by a vote of the citizens acting under a general law, a law passed to regulate elections to decide the question must be uniform, and cannot provide for a majority vote under certain circumstances, and a three-fifths vote under others.³

(5) Regulating county or township business: California, Idaho, Indiana, Nevada; county or township affairs: Colorado, Florida,⁴ Illinois, Montana, North Dakota, South Dakota, Wyoming, Territories; the affairs of cities, counties, townships, wards and school districts: Missouri (and boroughs: Pennsylvania⁵), Texas.

Regulating the internal affairs of towns and counties, or appointing local officers or commissioners to regulate municipal affairs: New Jersey. The word "towns" has been held to include cities.⁶

Regulating or changing county or district affairs: West Virginia.

"Business" was the term first used in provisions of the foregoing character, and has been defined in Indiana as "the conduct of such affairs as usually engage the attention of township and county officers," and as not including any act which, if it can be done at all, can only be done in a particular case and by authority of a special law. In this

¹ *State v. Sumter Co. Commrs.*, 19 Fla., 518.

² *Thomas v. Clay Co. Commrs.*, 5 Ind., 4.

³ *Nichols v. Walter*, 37 Minn., 264.

⁴ But not those of cities or towns: *State v. Duval Co. Commrs.*, 23 Fla., 483.

⁵ But not poor districts: *Jenks Tp. v. Sheffield Tp.*, 135 Pa., 400. In that case the question whether, as each county constituted a poor district, any law regulating the affairs of a poor district was not really a law as to the affairs of counties was not decided.

⁶ *Van Riper v. Parsons*, 40 N. J. L., 1; *Bingham v. Camden*, id., 156; *Pell v. Newark*, id., 550; *Reid v. Wiley*, 46 id., 473.

sense the restriction does not cover the case of reimbursement to a public officer who has personally supplied lost funds, nor to any other special grant of relief,¹ nor to a special act creating a particular court;² whereas in Colorado and Pennsylvania acts authorizing sessions of a county court, away from the county seat, have been viewed as regulating county "affairs."³ The word "affairs" seems to have been designedly used in the later constitutions as a wider significance than "business." In Pennsylvania it was first stated to mean in this connection "matters relating to government,"⁴ but later it has been defined as including not merely such affairs as concern the cities and counties in their governmental or corporate capacity, but all those which concern the people of the respective cities and counties.⁵ Hence an act regulating the fees of courts and administrative officers in certain counties has been held to touch the affairs of those counties, because every one of their citizens may be affected by such regulation, and all who have official dealings with them must be.⁶ Even taking the word "affairs" in the narrower sense above given, it covers the case of a law for the payment of claims against a county or township. The appropriation of county funds thereby made, or the levy of a tax thereby provided for, the imposition of duties upon local officers, etc., are all regulations of the affairs of the locality.⁷

On the other hand, an act increasing the powers of married women over certain kinds of property owned by them, including the loans of a particular city, is not a

¹ *Mount v. State*, 20 Ind., 29.

² *Eitel v. State*, 33 Ind., 101.

³ *Coulter v. Routt Co.*, 9 Col., 258; *Comth. v. Patton*, 88 Pa., 258; *Scowden's App.*, 96 id., 422. Acts authorizing special sessions of court were upheld in *Cooper v. Mills Co.*, 69 Io., 350; *Whallon v. Circuit Judge*, 51 Mich., 505, there being no constitutional provision to the contrary.

⁴ *Montgomery v. Comth.*, 91 Pa., 125.

⁵ *Morrison v. Bachert*, 112 Pa., 322.

⁶ *Ibid.*

⁷ *Williams v. Bidleman*, 7 Nev., 68; *Freeholders v. Buck*, 51 N. J. L., 155; *Montgomery v. Comth.*, 91 Pa., 125.

regulation of the affairs of such city, but "of the mode of transfer of certain kinds of property for the public business convenience." It relates to persons and property, not to cities or their inhabitants.¹

The object of this restriction is to prevent the legislature from interfering in local affairs by special legislation, but not to check the power of municipal corporations to pass local or special ordinances. Hence the general authority to town councils of boroughs to prevent by ordinance the erection of wooden buildings within their limits does not prevent them from forbidding such erection in a part of the borough only.² The right to pass ordinances of a local character within the municipal powers is also unaffected by the prohibition of incorporation by special act.³

The effect of local option laws as special regulations of local affairs has been considered in a previous article. The new constitution of Kentucky allows such laws in relation to the sale, loan or gift of vinous, spirituous or malt liquors, bridges, turnpikes or other public roads, public buildings or improvements, fencing, running at large of stock, matters pertaining to common schools, paupers, and the regulation by counties, cities, towns or other municipalities of their local affairs, but no such laws can be enacted unless applicable to all cities, towns, districts, precincts or counties.

Besides the matters already mentioned, local or special laws as to the following subjects have been held void as regulating the affairs of cities, counties, etc. :

Amending a special municipal charter.⁴

Providing for boards to regulate municipal affairs in cities, in the place of commissions and commissioners theretofore appointed.⁵

Allowing the inhabitants of any species of munici-

¹ *Loftus v. F. & M. Bk.*, 133 Pa., 97.

² *Klinger v. Bickel*, 117 Pa., 326.

³ *People v. Cooper*, 83 Ill., 585.

⁴ *Bingham v. Camden*, 40 N. J. L., 156; *Pell v. Newark*, id., 550.

⁵ *Van Riper v. Parsons*, 40 N. J. L., 1.

pality, except incorporated cities and towns, to form borough governments.¹

Providing for the appointment or election of local officers or employees.²

Regulating their tenure of office³ or salaries.⁴

Giving the courts power to grant licenses ;⁵ or even, by the repeal of a local act, reviving, as to a particular locality, a former general law giving such power.⁶

Granting power to issue bonds.⁷

Altering the ward lines in a city.⁸

Providing for an appeal from the decision of the county commissioners or city boards of revision of taxes in regard to assessments for taxation.⁹

Requiring license taxes collected within the limits of an incorporated city or town, in counties of a certain class, to be paid over to the town authorities for street improvements.¹⁰

The Georgia constitution provides that "whatever tribunal or officers may hereafter be created by the general assembly for the transaction of county matters shall be uniform throughout the State, and of the same name, jurisdiction, and remedies, except that the general assembly may provide for the appointment of commissioners of roads and revenue in any county." ¹¹ It also gives the legislature power "to provide for the creation of county commissioners in such counties as may require them, and to define their

¹ *Long Branch v. Sloane*, 49 N. J. L., 356.

² *Bingham v. Camden*, 40 N. J. L., 156; *Freeholders v. Stevenson*, 46 id., 173; *Reid v. Wiley*, id., 473; *Hallock v. Hollinshead*, 49 id., 64; *Gibbs v. Morgan*, 39 N. J. Eq., 126; *Ernst v. Morgan*, id., 391; affirmed, 40 id., 733; *Comth. v. Denworth*, 145 Pa., 172.

³ *New Brunswick v. Fitzgerald*, 47 N. J. L., 499; affirmed, 48 id., 457; *Pierson v. O'Connor*, 54 N. J. L., 36.

⁴ *Coutieri v. New Brunswick*, 44 N. J. L., 58.

⁵ *Zeigler v. Gaddis*, 44 N. J. L., 363.

⁶ *Sutterly v. Camden C. P.*, 44 N. J. L., 495.

⁷ *Anderson v. Trenton*, 42 N. J. L., 486.

⁸ *Pell v. Newark*, 40 N. J. L., 550.

⁹ *Scranton v. Silkman*, 113 Pa., 191.

¹⁰ *San Luis Obispo v. Graves*, 84 Cal., 71.

¹¹ Art. XI, § 3.

duties.”¹ Taken together these provisions were at first considered to mean that local laws appointing commissioners might be enacted, but that when enacted they should be made uniform in operation in the counties that required them;² but it has recently been held that even this uniformity is not essential.³ One reason given for this latter view is that since the constitution took effect the legislature had passed many acts far from uniform in regard to such matters. In view of the well-known tendency of legislatures to minimize the effect of all restrictions upon special legislation, this is scarcely an argument. What sort of uniformity the first clause above quoted did require, the court did not state.

The Wisconsin constitution provides that the legislature shall establish but one system of town and county government, which shall be as nearly uniform as possible.⁴ All local laws relating to any feature of such government, or in regard to any matter within its proper functions, are held to violate this provision. Thus acts changing the number of county supervisors,⁵ or restricting their powers,⁶ or appointing commissioners to superintend the erection of a court house in any one county;⁷ or providing for the building of wagon roads out of the highway taxes in certain counties;⁸ or relating to county aid in constructing bridges, applicable to all but one county,⁹ have all been held void on this account. The drainage of swamps and marshes, on the other hand, not being considered a part of the usual functions of town or county governments, an act providing a special system for the drainage and reclamation of lands in one county only, has been held valid.¹⁰ The

¹ Art. VI, § 19, ¶ 1.

² *Conley v. Poole*, 67 Ga., 254.

³ *Pulaski Co. v. Thompson*, 83 Ga., 270.

⁴ Art. IV, § 23.

⁵ *Peck v. Riordan*, 24 Wis., 541.

⁶ *State v. Dousman*, 28 Wis., 541.

⁷ *State v. Supervs. Milw. Co.*, 25 Wis., 339.

⁸ *McRae v. Hogan*, 39 Wis., 529.

⁹ *State v. Sauk Co. Comms.*, 62 Wis., 376.

¹⁰ *Bryant v. Robbins*, 70 Wis., 258.

requisite uniformity in county governments, moreover, does not prevent the passage of a law prescribing the manner of raising special county funds in one county, and for their safe keeping and disbursement.¹

A special law changing the composition of the board of township supervisors in a particular county regulates township affairs, not county affairs, and hence it is allowable even in a State where the constitution requires the legislature to provide by general law for a system of township government, such provision not affecting the regulation of township affairs in general.²

(6) Changing the names of places : California, Idaho, Illinois, Missouri, Nebraska, North Dakota, Pennsylvania, South Dakota, Texas, Wyoming, Territories.

VIII. AS TO PUBLIC OFFICERS.

(1) Creating offices, or prescribing the powers and duties of officers in counties, cities, townships, or election or school districts : California, Idaho, Missouri, Montana, North Dakota (boroughs also : Pennsylvania), Texas (not election districts: Wyoming).

Except as in this constitution otherwise provided : Idaho.

Regulating county and township offices: Nebraska.

Regulating the jurisdiction or duties of any class of officers except municipal: Florida.

In Missouri it is held that while a purely local office might (except for this provision be created by a local act, the law which creates an office which is to exist for the benefit of the whole State is necessarily general, whatever be its form ; and also that the test as to such office (and consequently as to the law creating it) is the character of the duties, not the source whence the expenses are paid.³ This view would probably meet with general acceptance in

¹ *Supervisors v. Pabst*, 45 Wis., 314.

² *Leach v. People*, 122 Ill., 420, construing Art. VII, § 7, of the constitution of 1846, being Art. X, § 5, of that of 1870.

³ *State v. Shields*, 4 Mo. App., 259.

other courts, but not the application of it to the particular case, which held that a court of limited territorial jurisdiction was not a local court, but one for the benefit of the whole State, and hence that the act creating it was general.

(2) Affecting the fees or salaries of any officers : California, Florida (except that compensation may be graded in proportion to population and necessary services required: Indiana).

Increasing or decreasing the salary or emoluments of public officers : Mississippi.

Creating, increasing, or decreasing the fees, percentage, or salaries (in some states, allowances) of public officers: California, Colorado, Idaho, Kentucky, Montana, North Dakota, Wyoming; during the term for which they were elected or appointed: Idaho, Illinois, Nebraska, New Jersey, New York, South Dakota, Territories.

Or extending the time for the collection thereof, or authorizing officers to appoint deputies: Kentucky.

Any law authorizing extra compensation to any public officer, agent or contractor, after the service has been performed, or contract entered into: Michigan.

In the Mississippi constitution, besides the general provision already given, it is provided that the legislature shall not enact any law for one or more counties, not applicable to all the counties in the State, increasing the uniform charge for the registration of deeds, or regulating costs and charges and fees of officers.¹

An act establishing police justices in any incorporated village, and thereby taking away the jurisdiction of justices of the peace, has been held in New York not to be a local act decreasing the fees of public officers within the meaning of the constitution.²

In California the salaries of county officers are required to be regulated by a classification of counties.³ An act

¹ Const. Miss., 1890, Art. IV, § 91.

² *People v. Duffy*, 56 S. C. N. Y., 276.

³ Cal. Const., Art. XII, § 5.

changing the salaries in every class, but providing that in some the change should take effect immediately, and in others only from the expiration of the terms of those then in office, was held to be special legislation in regard to salaries.¹

In the case of officers who have no "term" within the meaning of the constitution, the prohibition is unqualified, and their salaries, etc., cannot *at any time* be altered but by a general law.²

(3) Legalizing the unauthorized (California, Washington) or invalid act of any officer, except as against the State: California, Kentucky, North Dakota, Washington. In Idaho, on the contrary, this is only forbidden "as against the State."

Legalizing the unauthorized or invalid acts of any officer or agent of the State or a (parish: Louisiana) county, or municipality: Missouri.

IX. AS TO HIGHWAYS, PUBLIC GROUNDS, ETC.

Though a more or less comprehensive prohibition of special legislation in regard to highways, public grounds, etc., is very usual, the various constitutions differ considerably as to the particular matters to be affected by such prohibition. These matters are:

Authorizing the laying out, opening, altering, maintaining, or vacating roads, highways, streets, town plats, parks, cemeteries, graveyards, and public grounds not owned by the State: California, Idaho, Kentucky.

Laying out, opening, vacating, or altering town plats, streets, wards, alleys, and public grounds: South Dakota.

Laying out, altering, maintaining, and closing roads, highways, streets, and alleys: Louisiana.

Laying out, opening, altering, working, or discontinuing roads, highways, and alleys, or for draining swamps or other lowlands: New York.

¹ *Miller v. Kister*, 68 Cal., 142.

² *Gibbs v. Morgan*, 39 N. J. Eq., 126.

Laying out, opening, altering and except Minnesota) working roads and highways, vacating roads, town plats, streets, alleys and public grounds: Colorado, Illinois, Minnesota, Montana, Nebraska, New Jersey, North Dakota, West Virginia, Wyoming, Territories.

Laying out, opening and working on (maintaining: Oregon), highways: Indiana; (roads and highways: Iowa, Mississippi); vacating roads, town plats, streets, alleys and public squares (public grounds: Mississippi): Florida, Indiana, Iowa, Mississippi, Nevada, Oregon; and for the election or appointment of supervisors: Indiana, Oregon.

Authorizing the laying out, opening, altering and maintaining of roads, highways, streets and alleys; relating to (regulating: Pennsylvania) cemeteries, graveyards and public grounds other than those of the State: Missouri, Pennsylvania, Texas.

Vacating roads, streets or alleys: Arkansas.

Vacating or allowing any road laid out by the commissioners of highways, or any street in any city or village, or any recorded town plat: Michigan.

Laying out, opening or altering highways, except State roads in more than one county, and military roads built under grants from Congress: Washington, Wisconsin.

In New York it is held that the above provision was designed to prevent interference with the general highway system of the State, but applies only to the matters specifically referred to. A road may be graded, paved, provided with sewers or ornamented by special act, and the transfer of the road of a private corporation to park commissioners is equally outside the scope of the prohibition.¹ It is also held not to apply to city streets, for the reason that there being no restriction upon municipal incorporation by special act, and each city being governed as to streets by its own charter, no general law on the subject is possible;² and the legislature can by special act authorize

¹ *People v. Banks*, 67 N. Y., 568.

² *Matter v. Lex. Ave.*, 36 S. C. (N. Y.), 303; affirmed, 92 N. Y., 629; *Matter of Woolsey*, 95 N. Y., 135, reversing 36 S. C. (N. Y.), 626.

the common council of one city to discontinue a particular street. In passing upon such an act the Supreme Court said: "The legislature did not in this case undertake to pass a bill prohibited by this provision. It assumed by this act to confer authority upon the common council, and did not undertake to exercise the power itself. At most it enlarged the power therefore existing in the common council, who are vested with power over the street by the provisions of the charter."¹ A law applying to any county (containing a city of over 100,000 inhabitants, and territory contiguous to the same mapped out into streets and avenues), and providing for the laying out, etc., of such streets and avenues, has also been held general as based on a valid classification.²

In New Jersey an act authorizing the boards of freeholders of counties to open and maintain roads in all counties not having county road boards has been held local because based on an invalid classification.³

A curative special act to legalize the unauthorized proceedings of a county road board controlled by a general law is not strictly an act to lay out or open roads, and hence may be constitutional.⁴

X. AS TO SCHOOLS.

Providing for the management of common schools: California, Colorado, Idaho, Illinois, Kentucky, Montana, Nebraska, North Dakota, South Dakota, Washington, Wyoming, Territories; the management and support of free public schools: New Jersey; the support of common schools and preservation of the school fund: Indiana, Oregon.

Regulating the management of public schools, the building and repairing of schoolhouses (except in Louisiana), and the raising of money for such purposes: Louisiana, Missouri, Pennsylvania, Texas.

¹ *Weinckie v. N. Y. C., etc.*, R. R. Co., 68 S. C. N. Y., 619.

² *Matter of Church*, 92 N. Y., 1.

³ *Township of Lodi v. State*, 51 N. J. L., 402.

⁴ *Johnson v. Wells Co. Commrs.*, 107 Ind., 15.

Providing for the management or support of any private or common school, incorporating the same or granting such school any privileges: Mississippi.

Authorizing the apportionment of any part of the school fund: Minnesota, Washington, Wisconsin.

It is held in Illinois that this provision refers to the management of common schools, after their establishment and support has been provided for, so that it does not affect laws in regard to their establishment or support—*e. g.*, regulating the levying of taxes for school purposes and the custody of the funds raised thereby.¹

XI. AS TO TAXATION.

(1) For the assessment and collection of taxes: California, Idaho, Kentucky, North Dakota, Washington, Wisconsin, Wyoming; for State (territorial), county, township (except Idaho), and road (except Nevada) purposes: Indiana, Iowa, Nevada, Oregon, Territories; for State, county and municipal purposes: Florida.

The above is in addition to the very general requirement that the assessment and collection of taxes shall be by general and uniform laws.

An act providing for the collection of taxes on railroads situate in more than one county is special, even in a State where the constitution provides a particular method of assessing the property of such railroads for taxation.²

In Oregon an act to establish the fees of sheriffs and clerks in certain counties, and to empower them to collect their fees, has been held to violate this provision, such fees being regarded as in the nature of taxes, inasmuch as they were contributions levied on persons and property *in invitum*.³ In Nevada, however, it has since been held that while this is true in a certain sense, yet that they are not what are usually known as taxes, and that, in that State at all

¹ *Speight v. People*, 87 Ill., 595; *Fuller v. Heath*, 89 id., 296.

² *People v. Cent. Pac. R. R. Co.*, 83 Cal., 393.

³ *Manning v. Klippel*, 9 Ore., 367.

events, it was clear that it was never contemplated that the constitution should require general laws as to fees.¹ This prohibition applies to an act remitting and discharging all claims for penalties, accrued before a certain date, for non-payment of taxes when due, in cases where such taxes, though at one time delinquent, had ultimately been paid, with costs, before that date. The penalties legally falling upon all delinquent taxpayers alike, the legislature cannot select one class, those who have paid up before a certain date, and remit their penalties.²

An act legalizing the acts and proceedings of officers in regard to the assessment and collection of taxes also comes within this prohibition, which makes no distinction between retrospective and prospective legislation.³

(2) Extending the time for the collection of taxes : California, Idaho, Louisiana, Maryland, Minnesota, Missouri, Montana, North Dakota, Texas, Washington, Wisconsin, Wyoming ; or relieving any assessor or collector from the due performance of his duties, or his sureties from their liability : Kentucky, Missouri, Texas ; nor can any political corporation do this: Louisiana.

XII. AS TO ELECTIONS.

(1) For the opening (except California, Kentucky) and conducting of (providing for and conducting: Idaho) elections (for State, county, or township officers: Nebraska, Oregon; State, county, or municipal officers: Florida); and designating (fixing or changing: Louisiana, Nevada, Missouri, Texas) the place of voting: California, Kentucky, Colorado, Florida, Idaho, Illinois, Indiana, Louisiana, Missouri, Montana, Nebraska, Nevada, North Dakota, Oregon, Pennsylvania, Texas, West Virginia, Wyoming, Territories.

Except on the organization of new counties: California.

¹ *State v. Fogus*, 19 Nev., 247.

² *State v. Cal. M. Co.*, 15 Nev., 234 ; *State v. C. V. M. Co.*, 16 id., 432.

³ *Kimball v. Rosendale*, 42 Wis., 407.

Making or changing election precincts : Georgia.

Changing the boundaries of wards, precincts, or districts, except when new counties may be created : Kentucky.

In Maryland¹ and Tennessee,² the constitutions containing no such provision, laws regulating the method of holding elections have been sustained, although they only applied to certain localities, or classes of localities, in their respective States. In the Maryland case, however, it was observed, in a strong dissenting opinion, that, under the constitutional provisions in regard to the right of suffrage, the conditions on which that right could be exercised must necessarily be the same throughout the State.³

In Missouri an act dividing St. Louis into election districts, and providing for the election of a justice of the peace in each district, was held valid, notwithstanding the above provision. The court considered that the constitution had so separated that city from the other territorial divisions of the State, as to give it an organization different from that of any other city or county, and to necessitate legislation applicable to it alone.⁴

(2) Regulating the election of county and township officers: California, Idaho, Nevada.

Providing for the election of members of the boards of supervisors : New York ; in townships, incorporated towns or cities: Illinois, North Dakota.

¹ Lankford v. Co. Commrs., 73 Md., 105.

² Cook v. State, 90 Tenn., 407.

³ "The legislature has no right . . . to say that the voters of one county shall not exercise this right [of suffrage] except upon certain conditions, and that voters of another county may exercise this right without complying with such conditions. So careful is the constitution to preserve this equality, that in the matter of registration of voters it provides that such laws shall be uniform. *A fortiori* ought the regulations and requirements of this act . . . to be uniform and to apply to each and every voter in the State. Not only are the qualifications which the constitution prescribes for the exercise of the right of suffrage uniform, but all regulations in regard to its exercise must, as I construe it, be uniform also:" Lankford v. Co. Commrs., 73 Md., 107, 115, dissenting opinion of ROBINSON, J.

⁴ State v. Walton, 69 Mo., 556.

In New York an act providing that in four certain counties the supervisors should be elected and hold office for a term of years, was held to violate the provision above cited, in regard to such officers, as being a local law providing for their election and not merely for their term of office.¹

Providing for the creating of districts for the election of justices of the peace and constables : Mississippi.

XIII. GENERAL RESTRICTIONS.

(1) In any other case where a general law can be made applicable :² Alabama, Arkansas, California, Colorado (Florida, constitution of 1868), Illinois, Indiana, Iowa, Kansas, Kentucky (and would be advantageous : Mississippi), Missouri, Montana, Nebraska, Nevada, North Dakota, South Dakota, Texas, West Virginia, Wyoming, Territories.

The legislature shall pass general laws for all other cases which, in its judgment, may be provided for by general laws : New Jersey.

The legislature shall from time to time provide, as far possible, by general laws, for all matters usually appertaining to special or private legislation : Maine.

A curative law, to legalize acts of local government and the like, performed in good faith but defective, may be general if the act has been done by members of a class. Thus, where a general village incorporation law has been held void, the villages which had attempted to be incorporated under it while it was supposed to be valid were considered to form a class, and an act to validate their incorporation was held general.³ But such a law must often be special, because in many cases no general law could cover the case without being dangerously broad,

¹ *People v. Hoffman*, 60 How Pr. (N. Y.), 324; S. C., 24 Hun. (N. Y.), 142.

² How far this provision vests a discretion in the legislature as to the applicability of general laws is considered in a prior chapter.

³ *State v. Spande*, 37 Mich., 322.

while in others a general law would be superfluous.¹ Thus, in the case of an act to legalize the defective organization of a school district already in existence, it was forcibly pointed out by the court that as no precisely similar or analogous case was alleged or suggested as existing elsewhere in the State, and there was no legal presumption that any such case existed, a general law suited to the case would have no other or greater operation than the act in question, and the latter was not within the evil sought to be corrected by the constitution.²

Where, however, the act done is not a lawful act legally defective in the particular case, but something which there was no legal power to do, it cannot be validated by a special curative act. Thus, where a municipal corporation has passed an ordinance which was beyond its powers, to validate such an ordinance would practically be the same thing as to specifically authorize it in one case while denying the right so to ordain to all other municipalities similarly situated. It would be special legislation of the clearest kind, and wholly within the prohibition.³

It has been held in Nebraska that an act authorizing the issue of bonds by any county, if such issue be required by popular vote, to purchase grain for settlers whose crops have suffered from drought, can be made general, and that therefore a special act for the counties where such drought actually existed could not be resorted to.⁴

Among other matters which have been allowed to be regulated by special laws, on the ground that no general law could have been made applicable to the case, are the following:

The payment of the salaries of the legislature then in session.⁵

¹ *Johnson v. Wells Co. Commrs.*, 107 Ind., 15.

² *State v. Squires*, 26 Io., 340.

³ *Ind. School District v. Burlington*, 60 Io., 500.

⁴ *In re House Roll No. 284*, 31 Neb., 505.

⁵ *Ash v. Parkinson*, 5 Nev., 15.

Reimbursing a public officer who had personally supplied lost public funds.¹

An appropriation to a farmers' protective association for the expenses of defending suits for alleged infringement of patents.²

Authorizing a county superintendent to pay certain debts contracted by former school trustees.³

Districting the State by counties for judicial purposes.⁴

Detaching a county from a judicial district, and providing it with a court.⁵

Designing a place and otherwise providing for holding court away from the county seat.⁶

(2) In any other case where a general law has been made applicable : Georgia.

For the benefit of individuals or corporations in cases which are or can be provided for by a general law, or where the relief sought can be given by any court : Alabama, Mississippi.

No law shall be passed granting powers or privileges in any case where the granting of the same shall have been provided for by a general law : Kentucky, Pennsylvania; or where the courts have jurisdiction to grant the same or give the relief asked for : Arkansas, Kentucky, Pennsylvania, West Virginia.

In Maryland the legislature is forbidden to pass a special law "for any case for which provision has been made by existing general law," but this does not forbid local legislation,⁷ nor does it apply in the case of curative laws.⁸

¹ *Mount v. State*, 90 Ind., 29.

² *Merchants' Union, etc., Co. v. Brown*, 64 Io., 375.

³ *McKemie v. Gorman*, 68 Ala., 422.

⁴ *State v. Emmons*, 72 Io., 265.

⁵ *Coulter v. Routt Co.*, 9 Col., 258.

⁶ *Cooper v. Mills Co.*, 69 Io., 350

⁷ *State v. County Commrs.*, 29 Md., 516; *Lankford v. County Commrs.*, 73 id., 105.

⁸ *O'Brien v. County Commrs.*, 51 Md., 15.

Under the Georgia constitution the existence of a general local option law prevents the enactment of a prohibition law for one county,¹ and when a general law has been passed in regard to any matter as to which a special law had previously been in force, the latter cannot be continued in force by a subsequent special act, as the case is one to which a general law has been made applicable.²

Hence it has been held in Georgia that although the legislature, when not checked by contract, may vary by a special law any privilege, power or duty of a particular corporation, except such privileges, etc., as are common to all, yet as the code provides that all corporations shall have certain specified privileges, etc., the legislature cannot continue a charter in force after the date of its expiration for the sole purpose of enabling the corporation to defend suits then pending against it. If the corporation is to continue in existence, it must have all the powers and duties possessed by corporations under the general law.³

A law authorizing the people of one county to vote on the question of removing a county seat, though local and special, is not a law for the benefit of individuals or corporations, and hence not within the provision of the constitution of Alabama. "It affects the whole county, and relates to its political organization."⁴

In any State where the restrictions upon special legislation are numerous, most cases of grants of powers and privileges (covered in Pennsylvania and some other States by the general restriction above cited) are also specifically prohibited. Apart from this, however, it may be said that the powers and privileges here referred to are such as may be granted directly by a law, not such as incidentally result from it. Thus an act creating a township or school district does not of itself grant powers or privileges ; it is

¹ *Crabb v. State* (Ga.), 15 S. E. Rep., 455.

² *Dougherty Co. v. Boyt*, 71 Ga., 15.

³ *Logan v. W. & A. R. R. Co.*, 87 Ga., 533.

⁴ *Clarke v. Jack*, 60 Ala., 270.

merely an arrangement of governmental machinery, and the powers and privileges result from the act creating that machinery.¹

(3) No local or special act shall be enacted indirectly by the partial repeal of a general law : Kentucky, Louisiana, Missouri, North Dakota, Pennsylvania ; or by exempting from the operation of a general act any city, town, district or county : Kentucky.

(4) All laws of a general nature shall have a uniform operation : California, Florida, Iowa ; throughout the State : Kansas, North Dakota, Ohio.

As used in the constitution of Iowa, the first State to adopt this provision, it is immediately followed by a prohibition of all grants, to any citizen or class of citizens, of privileges and immunities which shall not equally belong, upon the same terms, to all citizens. Standing by itself, however, the former provision was, in a California case, pronounced to be unintelligible, unless understood as referring to privileges, immunities and burdens.² A somewhat similar view was taken in Ohio, where the provision was said to be directed against the enactment of local criminal laws, by which certain acts were made offences in certain parts of the State only.³ Accordingly, it was repeatedly held in these two States that the expression "laws of a general nature" did not mean laws in regard to a general subject, and hence that the provision in question did not prohibit special legislation merely because general legislation would have been practicable.⁴ Acts authorizing a county to subscribe to the stock of a railroad company,⁵ limiting and regulating county officers' fees in one county,⁶ regulating the selection of jurors in

¹ Wolf's App., 58 Pa., 471.

² *People v. Smith*, 17 Cal., 547 ; approved in *Brooks v. Hyde*, 37 Cal., 366.

³ *Cass v. Dillon*, 2 O. St., 607.

⁴ *Ryan v. Johnson*, 5 Cal., 86 ; *People v. Cent. Pac. R. R. Co.*, 43 id., 398, 433 ; *Ohio v. Covington*, 29 O. St., 102 ; *State v. Shearer*, 46 O. St., 275, overruling *State v. Powers*, 38 O. St., 54.

⁵ *Cass v. Dillon*, 2 O. St., 607.

⁶ *State v. Judges*, 21 O. St., 1.

one county,¹ granting power to appoint and control the police force of a city,² transferring an indictment to another county for trial,³ establishing a limitation of actions for the recovery of real estate in a particular city,⁴ and authorizing a justice of the peace in any city of a certain grade to sue for his fees during his term,⁵ have, accordingly, been held not to be of a general nature, and, therefore, not affected by this provision. Acts as to the jurisdiction of courts of common pleas,⁶ as to the liability of stockholders,⁷ and as to county officers in certain classes of counties,⁸ were, in the same States, held to be of a general nature.

In Kansas, however, herding and fence laws have been held to be of a general nature because they impose "a rule of property which applies equally to all property that can be affected by such a rule,"⁹ and even in Ohio it has lately been announced that where the general laws in regard to a subject do not contemplate the existence of any local conditions which could affect the regulation of such subject, all laws in regard thereto are necessarily of a general nature. The custody and disbursement of the public funds and the system of public accounts have been held to be of that nature, and very recently local law in regard to sidewalks in villages was held to be invalid because its subject was of a character that interested and concerned the inhabitants of every village in the State.¹⁰ These cases would seem to regard the expression "laws of a general nature" as practically equivalent to "laws in regard to a general subject," *i. e.*, a subject which can properly be regulated by general laws.

¹ *McGill v. State*, 34 O. St., 228.

² *Ohio v. Covington*, 29 O. St., 102.

³ *People v. Smith*, 17 Cal., 547.

⁴ *Brooks v. Hyde*, 37 Cal., 366.

⁵ *Hart v. Murray*, 48 O. St., 605.

⁶ *Kelley v. State*, 6 O. St., 269.

⁷ *French v. Teschemaker*, 24 Cal., 518.

⁸ *Dougherty v. Austin*, 94 Cal., 601.

⁹ *Darling v. Rodgers*, 7 Kan., 592; *Robinson v. Perry*, 17 *id.*, 248.

¹⁰ *State v. Ellet*, 47 O. St., 90.

The provision in regard to the uniform operation of laws of a general nature means that if such laws be enacted for particular localities they will be null and void, and not that they will be treated as operating uniformly throughout the State in spite of their express terms.¹

An act for the refunding of taxes erroneously paid, in counties containing a city of the first grade, violates this provision.²

(5) All laws [in regard to matters as to which special legislation is forbidden] shall be general and of uniform operation throughout the State: Iowa, Florida, Minnesota, Nevada, Wisconsin.

¹ *State v. Thompson*, 2 Kan. 433.

² *Hamilton Co. Commrs. v. Rosche (O.)*, 33 N. E. Rep., 408.